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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,557	11/13/2003	Richard A. Hogan	03-5382	8813
39820	7590	11/01/2006	EXAMINER	
EDWARD M. LIVINGSTON, PA 963 TRAIL TERRACE DRIVE NAPLES, FL 34103			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/712,557	HOGAN ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, the applicant recites front and back sections having a cover, however the specification only supports a front section having a cover per figure 1. Also, the applicant claims a filling located between the front and back sections, however, the page 6, lines 10 – 12 of the specification support a filling located within the pad. It is unclear what the pad comprises. Are the pad, the cover and the filling three separate elements? Clarification and/or correction are required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5 – 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by von Emster (US 5,248,308).

With reference to claim 1, von Emster discloses an ostomy comfort pad comprising: a front section and a back section having edges; said front section is attached to said back section along said edges; said front and back sections having a top section, a body section and a bottom section; said top sections having at least one arm (figure 2); said at least one arm having a fastener (H); said body sections having a predetermined length; said body sections having a cut-out (14); said front bottom section having a pocket (13), sized and shaped for the acceptance of an ostomy appliance clip; and said front and back sections having a cover (figure 4), and a filling located between the front and back sections as set forth in col. 2, lines 60 – 65.

As to claim 2, von Emster discloses an ostomy comfort pad wherein: said top sections have two arms (figure 2); and said front top, body and bottom sections are the same size and shape as said back top, body and bottom sections as set forth in figure 1.

Regarding claim 3, von Emster discloses an ostomy comfort wherein said fastener is a hook and loop type material; and said hook and loop type material is located on said front section as set forth in col. 3, lines 9 – 11 and in figure 2.

With respect to claim 5, von Emster discloses an ostomy comfort pad wherein: said arms have a predetermined length; and said arm lengths is at least half the length of the body sections as set forth in figure 2.

As to claim 6, von Emster discloses an ostomy comfort pad wherein: said cut-out is sized and shaped for the acceptance of an ostomy appliance collar as set forth in figures 1 – 2.

As to claim 7, von Emster discloses an ostomy comfort pad wherein: said pocket is sized and shaped for the acceptance of an ostomy appliance clip as set forth in figures 1 – 2.

Regarding claim 10, von Emster discloses an ostomy comfort pad wherein: said body sections are sized slightly larger than an ostomy appliance; and said bottom sections are sized slightly larger than an ostomy appliance as set forth in figures 1 – 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308).

The difference between von Emster and claim 4 is the provision that the fastener is an adhesive tab.

It would have been obvious to one of ordinary skill in the art to modify the fastener of von Emster to provide an adhesive fastener since the substitution of one type of fastener for another is within the level of ordinary skill in the art.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308) in view of Hogan (US 4,439,191) .

The difference between von Emster and claim 8 is the provision that the cover is polypropylene.

Hogan teaches an ostomy appliance with a polypropylene cover as set forth in col. 3, lines 22 – 26.

It would have been obvious to one of ordinary skill in the art to modify the cover of von Emster to providing polypropylene because the polypropylene has the requisite strength to hold waste material therein and is also impervious to liquid and gas as taught by Hogan in col. 3, lines 22 – 26.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308) in view of Zedlitz (US 2003/0225387).

The difference between von Emster and claim 10 is the provision that the filling is pinewood fluff.

Zedlitz teaches an ostomy cover with a wood pulp fluff filling as set forth on page 2, [0027].

It would have been obvious to one of ordinary skill in the art to modify the filling of von Emster to providing a wood pulp fluff filling because the wood pulp fluff filling provides a more effective product as taught by Zedlitz on page 2 [0027].

Response to Arguments

Applicant's arguments filed April 14, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's argument that the instant application is designed to shield the user from heat, the examiner contends that the cover of von Emster is also a layer placed between the user and the ostomy appliance which would similarly shield the user from heat.

Next, the applicant argues that the von Emster does not disclose a pocket. The examiner contends that a pocket is defined as a receptacle or as an enclosure. The element 13 of von Emster functions in this capacity. The applicant is reminded that a recitation of the intended use (i.e. the fact that the pocket of the instant application does not need to be opened to permit draining) of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a filling located between covers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The claim recites a filling located between front and back sections.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michele Kidwell
Primary Examiner
Art Unit 3761